

Senate Bill No. 955

CHAPTER 836

An act to amend Sections 1386, 1388, 1391, 1392, and 1393 of the Health and Safety Code, relating to health care coverage.

[Approved by Governor September 24, 1998. Filed
with Secretary of State September 25, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 955, Rosenthal. Health care coverage.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Commissioner of Corporations.

Existing law sets forth procedures under which the commissioner may suspend or revoke any license issued under the act or assess civil penalties.

This bill would authorize the commissioner to, by order, suspend or revoke a license or assess penalties under these provisions only after appropriate notice and opportunity for hearing. The bill would authorize the assessment of administrative penalties rather than civil penalties.

Existing law sets forth the acts or omissions of a plan that constitute grounds for disciplinary action by the commissioner.

This bill would add to the acts that constitute grounds for disciplinary action by the commissioner.

Existing law provides for various sanctions, including the assessment of civil penalties, against a solicitor or solicitor firm engaging in presenting or advertising information regarding a plan for certain acts or omissions constituting grounds for disciplinary action.

This bill would authorize the assessment of administrative penalties rather than civil penalties and would revise the grounds for disciplinary action.

Existing law authorizes the commissioner to issue an order directing a plan, solicitor firm, or any representative thereof, or a solicitor to cease and desist from engaging in violations of the act.

This bill would expand the authority to issue a cease and desist order pursuant to this provision to apply to violations of any rule adopted under the act or any order issued by the commissioner and would authorize the commissioner to issue a cease and desist order directed to any other person engaging in these violations or violations of the act.

Existing law sets forth provisions that authorize the commissioner to institute a proceeding to obtain injunctive or other equitable relief in the case of any violation of the act.

This bill would, instead, specifically authorize the commissioner to bring an action in superior court to enjoin any act or practice constituting a violation of the act or to enforce any rule adopted or order issued pursuant to the act. The bill would further revise these provisions with regard to the conduct of the proceedings, the relief that may be claimed and granted, and the appointment of persons by the superior court to exercise the powers of a defendant in the action.

Existing law requires the superior court in the county in which the principal office of a health care service plan is located to issue an order vesting title to all of the assets of the plan in the commissioner when the commissioner files a verified application showing conditions for disciplinary action exist.

Existing law also authorizes the commissioner, without notice and before applying to the court for any order, to take possession of various assets and property of the plan if irreparable loss and injury to the property and business of the plan has occurred or may occur unless the commissioner acts immediately.

This bill would, in addition, authorize the commissioner, without notice and before applying to the court for any order, to take possession of various assets and property of the plan if irreparable loss and injury to the plan's enrollees has occurred or may occur unless the commissioner acts immediately. The bill would specify procedures under which a plan may enjoin the acts of the commissioner and procedures that authorize the commissioner to appoint a conservator over the plan if the commissioner is entitled to possession of the property, business, and assets of the plan under these provisions. The bill would require the commissioner to apply to the superior court for an order confirming the commissioner's appointment of the conservator.

Existing law provides that any person having possession of and refusing to deliver books, records, or assets of a plan against which a seizure order has been issued by the commissioner under the above provisions is guilty of a misdemeanor and punishable by, among other things, a fine not exceeding \$1,000.

This bill would increase the maximum fine from \$1,000 to \$10,000.

The people of the State of California do enact as follows:

SECTION 1. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend or revoke any license issued under this chapter to a health care service plan or assess administrative penalties if the commissioner determines that the



licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the commissioner:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or 1352, or with its published plan, or in any manner contrary to that described in, and reasonably inferred from, the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the commissioner.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services which do not comply with those published in the latest evidence of coverage found unobjectionable by the commissioner.

(3) The health care service plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the commissioner pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter.

(7) The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration or exemption issued pursuant to the Business and Professions Code, or the Health and Safety Code which would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the commissioner pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the commissioner pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this chapter. The commissioner may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, 2056, or 2056.1 of the Business and Professions Code.

(14) The plan has been subject to a final disciplinary action taken by this state, another state, an agency of the federal government, or another country, for any act or omission that would constitute a violation of this chapter.

(c) (1) The commissioner may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if either of the following applies:

(A) The prohibition is in the public interest and the person has committed, caused, participated in, or had knowledge of a violation of this chapter by a plan, management company, or solicitor firm.

(B) The person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to, subdivision (d).

(d) A proceeding under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 2. Section 1388 of the Health and Safety Code is amended to read:

1388. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure a person acting as a solicitor or solicitor firm, or suspend for a period not exceeding 24 months or bar a person from operating as a solicitor or solicitor firm, or assess administrative penalties against a person acting as a solicitor or solicitor firm if the commissioner determines that the person has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the commissioner:

(1) The continued operation of the solicitor or solicitor firm in a manner that may constitute a substantial risk to a plan or subscribers and enrollees.

(2) The solicitor or solicitor firm has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the commissioner pursuant to the chapter, or any order issued by the commissioner pursuant to this chapter.

(3) The solicitor or solicitor firm has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(4) The engagement of a person as an officer, director, employee, or associate of the solicitor firm contrary to the provisions of an order issued by the commissioner pursuant to subdivision (d) of this section or subdivision (c) of Section 1386.

(5) The solicitor or solicitor firm, or its management company, or any other affiliate of the solicitor firm, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in that solicitor firm, management company, or affiliate, has been convicted or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this chapter. The commissioner may issue an order hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commissioner shall notify plans of any order issued pursuant to subdivision (a) which suspends or bars a person from engaging in operations as a solicitor or solicitor firm. It shall be unlawful for any plan, after receipt of notice of the order, to receive any new subscribers or enrollees through that person or to otherwise utilize any solicitation services of that person in violation thereof.

(d) (1) The commissioner may prohibit any person from serving as an officer, director, employee, or associate of any plan or solicitor firm, or as a solicitor, if that person was an officer, director, employee, or associate of a solicitor firm that has been the subject of an order of suspension or bar from engaging in operations as a solicitor firm pursuant to this section and that person had knowledge of, or participated in, any of the prohibited acts for which the order was issued.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a solicitor firm under this section or may constitute a separate proceeding, subject in either case to subdivision (e).



(e) A proceeding for the issuance of an order under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 3. Section 1391 of the Health and Safety Code is amended to read:

1391. (a) (1) The commissioner may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter.

(2) If the plan, solicitor firm, or any representative thereof, or solicitor, or any other person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding subdivision (b) of Section 1397.

(b) If a timely request for a hearing is made by a licensed plan, the request shall automatically stay the effect of the order only to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan or both. However, no automatic stay shall be issued if any examination or inspection of the plan performed by the commissioner discloses, or reports or documents submitted to the commissioner by the plan on their face show, that the plan is in violation of any fiscal requirement of this chapter or in violation of any requirement of Section 1384 or 1385. In the event of an automatic stay, only that portion of the order requiring cessation of operation or prohibiting enrollment shall be stayed and all other portions of the order shall remain effective. If a hearing is held, and a finding is made that the health or safety of the members and potential members of the plan might be adversely affected by its continued operation, the stay shall be terminated. This finding shall be made, if at all, not later than 30 days after the date of the hearing.

(c) If a timely request for a hearing is made by an unlicensed plan, the commissioner may stay the effect of the order to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan, for that period and subject to those conditions that the commissioner may require, upon a determination by the commissioner that the action would be in the public interest.

SEC. 4. Section 1392 of the Health and Safety Code is amended to read:

1392. (a) (1) Whenever it appears to the commissioner that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this chapter, any rule



adopted pursuant to this chapter, or any order issued pursuant to this chapter, the commissioner may bring an action in superior court, or the commissioner may request the Attorney General to bring an action to enjoin these acts or practices or to enforce compliance with this chapter, any rule or regulation adopted by the commissioner pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter, or to obtain any other equitable relief.

(2) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by paragraph (1) a claim for any ancillary or equitable relief and the court shall have jurisdiction to award this additional relief.

(3) Upon a proper showing, a permanent or preliminary injunction, restraining order, writ of mandate, or other relief shall be granted, and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets.

(b) A receiver, monitor, conservator, or other designated fiduciary, or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, or trustees, or any other person who exercises similar powers and performs similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

SEC. 5. Section 1393 of the Health and Safety Code is amended to read:

1393. (a) The superior court of the county in which is located the principal office of the plan in this state shall, upon the filing by the commissioner of a verified application showing any of the conditions enumerated in Section 1386 to exist, issue its order vesting title to all of the assets of the plan, wherever situated, in the commissioner or the commissioner's successor in office, in his or her official capacity as such, and direct the commissioner to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business of the person as may seem appropriate to the commissioner, and enjoining the person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of the court.

(b) Whenever it appears to the commissioner that irreparable loss and injury to the property and business of the plan or to the plan's enrollees has occurred or may occur unless the commissioner acts immediately, the commissioner, without notice and before applying to the court for any order, may take possession of the property,



business, books, records, and accounts of the plan, and of the offices and premises occupied by it for the transaction of its business, and retain possession until returned to the plan or until further order of the commissioner or subject to an order of the court. Any person having possession of and refusing to deliver any of the books, records, or assets of a plan against which a seizure order has been issued by the commissioner, shall be guilty of a misdemeanor and punishable by a fine not exceeding ten thousand dollars (\$10,000) or imprisonment not exceeding one year, or both the fine and imprisonment. Whenever the commissioner has taken possession of any plan pursuant to this subdivision, the owners, officers, and directors of the plan may apply to the superior court in the county in which the principal office of the plan is located, within 10 days after the taking, to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may do any of the following:

(1) Dismiss the application after confirming the commissioner's authority to take possession of all of the plan's books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business as the commissioner may deem appropriate, and enjoining the owners, officers, and directors, and their agents and employees, from the transaction of plan business or disposition of plan property until the further order of the court.

(2) Enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to the plan.

(3) Make any further order as may be just.

(c) If any facts occur that would entitle the commissioner to take possession of the property, business, and assets of the plan, the commissioner may appoint a conservator over the plan and require any bond of the conservator as the commissioner deems proper. The conservator, under the direction of the commissioner, shall take possession of the property, business, and assets of the plan pending further disposition of its business. The conservator shall retain possession until the property, business, and assets of the plan are returned to the plan, or until further order of the commissioner, except that the conservator shall be able to pay necessary costs of the ongoing operation without formal order of the commissioner. Whenever the commissioner has taken possession of any plan pursuant to subdivision (b), the commissioner shall, within 10 days after the taking, apply to the superior court in the county in which the principal office of the plan is located for an order confirming the commissioner's appointment of the conservator. The order may be given after a hearing upon notice that the court prescribes.

(d) (1) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets

of a plan, has the same powers and rights, and is subject to the same duties and obligations, as the commissioner under the same circumstances, and during this time, the rights of a plan and of all persons with respect to the plan are the same as if the commissioner had taken possession of the property, business, and assets of the plan, for the purpose of carrying out the conservatorship.

(2) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets of a plan, shall have all of the rights, powers, and privileges of the plan, and its officers and directors, for the purpose of carrying out the conservatorship. All expenses of any conservatorship shall be paid from the assets of the plan, and shall be a lien on the plan which shall be prior to any other lien.

(3) No action at law or in equity may be maintained by any party against the commissioner or a conservator by reason of their exercising or performing the privileges, powers, rights, duties, and obligations pursuant to the order, or with the approval, of the superior court.

(e) Upon appointing a conservator, the commissioner shall cause to be made and completed, at the earliest possible date, an examination of the affairs of the plan as shall be necessary to inform the commissioner as to the plan's financial condition.

(f) If the commissioner becomes satisfied that it may be done safely and in the public interest, the commissioner may terminate the conservatorship and permit the plan for which the conservator was appointed to resume its business under the direction of its board of directors, subject to any terms, conditions, restrictions, and limitations the commissioner prescribes.

